

**Draft Regulations**  
**California Code of Regulations**  
**Chapter 4. Resource Conservation Programs**

**Article 3. Rigid Plastic Packaging Container Program.**

**17946. Who Must Certify That Compliance With This Article Is Met?**

(a) Who must submit certifications?

Product manufacturers, pursuant to Section 17943 (b)(12) of this Article, and only upon notification from the Board as described in this section, are required to certify to the Board that the containers that they use comply with the rigid plastic packaging container requirements if they sell or offer for sale a product in a rigid plastic packaging container that is sold to a final end-user in California.

Upon the Board's request, a product manufacturer must submit a Board-supplied product manufacturer certification containing information that includes, but is not limited to, the information described in section ~~(h)~~ (i) below.

A product manufacturer 'must, in addition, submit a container manufacturer certification if the product manufacturer chooses compliance based on the postconsumer content or source reduction compliance options, pursuant to this section and Sections 17944 and 17946.5 of this Article.

Container manufacturers must supply a certification to product manufacturers that includes the information described in section ~~(g)~~ (h) below, if the container manufacturer produces rigid plastic packaging containers that either

- (1) Meet the postconsumer material compliance option, or
  - (2) Meet the source reduction compliance option where the source reduction was achieved by reducing the weight of the containers used for a specific amount (ounces, grams, etc.) of product.
- Proprietary information included in a certification submitted to the Board as required by this Article shall not be made available to the general public. The Board's procedures for protection of proprietary information can be found in section 17948.

(b) When must certifications be submitted?

The Board may request a completed certification from a product manufacturer once per calendar year or once per a product manufacturer's compliance measurement period, pursuant to Section 17943 (b)(15) of this Article. The Board shall not initiate requests for certifications until January 1, 1996, and will not require a product manufacturer to submit evidence of its compliance until 90 days after the end of the calendar year or measurement period established pursuant to Section 17943 (b)(15).

(c) Where can I get a certification form?

As part of the Board's notification to product manufacturers that they shall submit a compliance certification, the Board will include a product manufacturer certification form and a container manufacturer certification form. The Board will request that compliance certification be made by certified mail.

(d) How will the Board determine which product manufacturers are to submit a rigid plastic packaging container certification form and how will the Board notify product manufacturers of its determination?

In addition to random selection, the Board may use the following criteria to determine when to request a certification form from a product manufacturer: container type, product type held by the container, company size, or receipt of information that causes the Board to suspect that a container is not in compliance. The Board will request a certification of compliance from a product manufacturer in writing.

(e) How long do I have to respond to a Board request for a completed certification forms?

A product manufacturer's completed certification forms must be postmarked no later than ~~60~~ 90 calendar days from the date on which the Board's request arrived via certified mail. Product manufacturers may, in writing prior to the due date, request an extension of up to an additional 30 days to respond to the Board's request for certification. An extension may be granted by the Board if the product manufacturer provides the Board with documentary evidence to support its request based on criteria such as corporate acquisitions, corporate reorganizations, difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon the Board's evaluation.

(f) As a product manufacturer, how will I know if my certification forms are complete?

The Board will review the certification forms to determine (1) the completeness of the certification forms; and (2) if not complete, any additional information or documentation needed. The Board will then, via certified mail, notify the product manufacturer as to the completeness of the forms. The Board's notice will state whether any additional information or documentation is required. The product manufacturer will have 30 days after the receipt of the notice to provide the required information or documentation.

~~(f)~~ (g) If I am a product manufacturer and I wish to claim compliance through the source reduction or postconsumer content options, as described in Section 17944 of this Article, who must provide certification to the Board: I or the container manufacturer?

When the basis [or compliance is either the postconsumer material option or the source reduction compliance option where the reduction was achieved by a simple decrease in container weight, then the container manufacturer must provide certification to the product manufacturer. If either of these two compliance options are claimed, you must request the appropriate container manufacturer(s) to complete a Board-supplied container manufacturer certification form. This form will be provided to you with the original request for certification from the Board or at your request. This form must be completed by the container manufacturer, and must accompany your product manufacturer certification form when sent to the Board. The required information to substantiate either of these two compliance claims is described in section ~~(g)~~ (h) below.

Alternatively, if the container manufacturer provides you with all the information described in section ~~(g)~~ (h) below as part of standard business procedures, then that same information may be submitted to the Board in lieu of a completed container manufacturer form supplied by the Board. As with the Board-supplied container manufacturer certification, the information supplied by the container manufacturer to you must be submitted with any product manufacturer certification that is submitted to the Board.

The product manufacturer is responsible for compliance with the requirements in Section 17944, but the container manufacturer is responsible for ensuring the accuracy of any information it provides to you.

~~(g)~~ (h) If I am a container manufacturer, what type of information must I provide in my certification? You must provide, at a minimum, the following information:

(1) Your company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying required information:

(2) The name, address, and telephone number of the product manufacturer at whose behest you are completing the certification form and the name and title of the person at that company who requested that you complete a certification form. If you supply a standard form to all customers expressing compliance with either the postconsumer material or source reduction compliance options as described in ~~(f)~~ (g) of this section and which includes the information required in this section, then you do not need to provide the information in the previous sentence;

(3) For compliance with the postconsumer material option, state the following: the percentage of postconsumer material in the containers in question, the total weight of resin used to manufacture the specified containers, and the total weight of postconsumer resin used to manufacture the specified containers.

(4) For compliance with the source reduction option that was achieved by a simple reduction in container weight, state the following: the percentage of weight reduction for the containers, and the average weight of the containers of the packaging, line before and after source reduction occurred.

(5) Any other information the Board determines is necessary to verify compliance.

(6) The certification must be submitted under penalty of perjury, according to the following format:

**"I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct."**

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

~~(h)~~ (i) If I am a product manufacturer, what type of information must I provide in my certification? The information submitted on a Board-supplied product manufacturer certification form shall include, but not be limited to, the following:

(1) Your company's name, mailing address, and telephone number, and the name and title of the person responsible for supplying the required information;

(2) The advertised name of your product containers regulated by this article and the resin type used for the containers;

(3) The compliance option, pursuant to Sections 17943 and 17944 of this Article, used to attain compliance or a statement that the product container is not in compliance with program requirements. The information you are required to provide depends on the compliance option used.

(A) For compliance with the postconsumer material option, state the percentage of postconsumer material in the containers for which you claim compliance.

(B) For compliance with any of the recycling rate options, state which recycling rate option was used, the recycling rate achieved, and a description of the products held by the containers that have achieved the stated rate.

(C) For compliance with the reuse option, state the average number of times the container was reused.

(D) For compliance with the refill option, state the average number of times the container was refilled.

(E) For compliance with the source reduction option where the source reduction was achieved by either concentrating the product, or achieved by a combination of concentrating the product and reducing the weight of the container that holds the product, you must provide the following:

1. The percentage the container was source reduced, and

2. The average weight per unit of product or the average weight per use of product before the source reduction was made and the average weight per unit of product or the average weight per use of product after the source reduction was made.

(4) Any other information the Board determines is necessary to verify compliance.

(5) The certification must be submitted under penalty of perjury, according to the following format:

**"I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct."**

\_\_\_\_\_

\_\_\_\_\_

(Date)

(Signature)

Note:

*Authority cited:*

Section 40502 and 42325 of the [Public Resources Code](#).

*Reference:*

Section 42320, 42321, 42323 and 42325 of the [Public Resources Code](#).

## 17949. Violations and Penalties

(a) What may result if I provide the Board with a false or misleading certification?

Pursuant to Public Resources Code 42322, within 30 days of the Board having made a determination that an entity provided the Board with a false or misleading certificate, the Board shall refer that entity to the Attorney General for prosecution for fraud.

(b) What may result if I do not comply with the program requirements?

Any violation is a public offense and is punishable by a fine not to exceed \$100,000. In addition, violators may be subject to a civil penalty not to exceed \$50,000 per violation. Total fines and penalties are not to exceed \$100,000 per annum for each violator. Annually, on and after July 1, 1996, the Board shall publish a list of all violators of these requirements and the amount of the fines they were assessed.

~~(c) What may occur if a manufacturer that is not party to an agreement with a trade association, or the trade association that contractually agreed with the Board to submit a report, fails to submit a report to the Board by December 1, 1995, or the Board disapproves of the report?~~

~~If a report is not submitted to the Board by December 1, 1995, or the Board does not approve a report, then the manufacturer may be assessed penalties pursuant to *Public Resources Code* Section 42310.2 (b), or the Board may take one of the following actions, as selected by the manufacturer:~~

~~(1) Require the manufacturer to take additional actions, including, but not limited to, one or more of the measures pursuant to Section 17948 (c)(3) of this Article, to ensure that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers.~~

~~(2) Impose a civil penalty of up to \$100,000. In imposing monetary penalties, the Board shall take into consideration all of the following factors:~~

~~(A) The size and net worth of the manufacturer;~~

~~(B) The impact of the violation on the overall objectives of this chapter; and~~

~~(C) The severity of the violation.~~

~~(d) Who is liable for assessed penalties if manufacturers elect to be parties to an agreement whereby a trade association submits reports required pursuant to Section 17947, the represented product manufacturer or the trade association?~~

~~(1) The agreement must ensure that each manufacturer which elects to be a party to the agreement and which is a member of the trade association which submits that report on their behalf shall be liable for the full amount of any civil penalties which may be imposed or shall comply with any requirement imposed by the Board pursuant to subdivisions (c) (i) and (c)(2) of this Section, as selected by the manufacturer. No manufacturer shall be liable for a civil penalty greater than \$100,000, regardless of the number of trade associations of which the manufacturer is a member.~~

~~(2) No trade association, representing manufacturers of rigid plastic packaging containers, which submits the required report pursuant to an agreement with the Board, pursuant to section 17948, shall be liable for fines and civil penalties as specified in section 17949 (b).~~

~~(e) Any penalty imposed pursuant to subdivision (c) or (d) of this section shall not be required to be paid by a manufacturer before January 1, 1997.~~

(c) What are the penalties for not complying with program requirements?  
Penalties for specified violations of program requirements follow.

<u>Violation</u>	<u>Description of Violation</u>	<u>Penalty</u>
<u>(1) CCR Section 17944;</u> <u>PRC Section 42310</u>	<u>Product manufacturer did not comply with container requirements. Penalty determined by degree of noncompliance.</u>	<u>\$5,000—\$50,000</u> <u>See Subsection (d).</u>
<u>(2) CCR Section 17946</u>	<u>Product manufacturer did not submit certification by due date.</u>	<u>\$1,000—\$50,000</u> <u>See Subsection (e).</u>
<u>(3) CCR Section 17946</u>	<u>Product manufacturer did not submit complete or accurate certification by due date. Degree of incompleteness or inaccuracies include, but are not limited to, misreporting exemptions; failure to account for all products; failure to account for subsidiaries and divisions; lack of container manufacturer's verification of number of containers sold or weight of containers; inconsistencies in information from product manufacturer and container manufacturer; lack of signatures; mathematical inaccuracies.</u>	<u>\$1,000—\$50,000</u>
<u>(4) CCR Section 17946;</u> <u>PRC Section 42321</u>	<u>Product manufacturer submitted false or misleading information on certification.</u>	<u>Referral to Attorney General for prosecution for fraud within 30 days of discovery by Board; maximum fine, \$100,000.</u>

(d) For violation (1) how will the degree of noncompliance be determined?

The degree of noncompliance will be determined according to the following point system where the amount of violation will be determined according to the following formula: \$50,000 minus \$1,800 times number of points or [\$50,000—(\$1,800 x number of points)].

#### Rigid Plastic Packaging Container Compliance Point System

<u>Points</u>	<u>PC Resin</u>	<u>Source Reduction</u>	<u>Reuse</u>	<u>Refill</u>
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	(Percent PCR)	(Percent SR)	(Times)	(Times)
<u>1</u>	<u>1</u>	<u>0.4</u>	<u>0.2</u>	<u>0.2</u>
<u>2</u>	<u>2</u>	<u>0.8</u>	<u>0.4</u>	<u>0.4</u>
<u>3</u>	<u>3</u>	<u>1.2</u>	<u>0.6</u>	<u>0.6</u>
<u>4</u>	<u>4</u>	<u>1.6</u>	<u>0.8</u>	<u>0.8</u>
<u>5</u>	<u>5</u>	<u>2</u>	<u>1</u>	<u>1</u>
<u>6</u>	<u>6</u>	<u>2.4</u>	<u>1.2</u>	<u>1.2</u>
<u>7</u>	<u>7</u>	<u>2.8</u>	<u>1.4</u>	<u>1.4</u>
<u>8</u>	<u>8</u>	<u>3.2</u>	<u>1.6</u>	<u>1.6</u>
<u>9</u>	<u>9</u>	<u>3.6</u>	<u>1.8</u>	<u>1.8</u>
<u>10</u>	<u>10</u>	<u>4</u>	<u>2</u>	<u>2</u>
<u>11</u>	<u>11</u>	<u>4.4</u>	<u>2.2</u>	<u>2.2</u>
<u>12</u>	<u>12</u>	<u>4.8</u>	<u>2.4</u>	<u>2.4</u>
<u>13</u>	<u>13</u>	<u>5.2</u>	<u>2.6</u>	<u>2.6</u>
<u>14</u>	<u>14</u>	<u>5.6</u>	<u>2.8</u>	<u>2.8</u>
<u>15</u>	<u>15</u>	<u>6</u>	<u>3</u>	<u>3</u>
<u>16</u>	<u>16</u>	<u>6.4</u>	<u>3.2</u>	<u>3.2</u>
<u>17</u>	<u>17</u>	<u>6.8</u>	<u>3.4</u>	<u>3.4</u>
<u>18</u>	<u>18</u>	<u>7.2</u>	<u>3.6</u>	<u>3.6</u>
<u>19</u>	<u>19</u>	<u>7.6</u>	<u>3.8</u>	<u>3.8</u>
<u>20</u>	<u>20</u>	<u>8</u>	<u>4</u>	<u>4</u>
<u>21</u>	<u>21</u>	<u>8.4</u>	<u>4.2</u>	<u>4.2</u>
<u>22</u>	<u>22</u>	<u>8.8</u>	<u>4.4</u>	<u>4.4</u>
<u>23</u>	<u>23</u>	<u>9.2</u>	<u>4.6</u>	<u>4.6</u>
<u>24</u>	<u>24</u>	<u>9.6</u>	<u>4.8</u>	<u>4.8</u>
<u>25</u>	<u>25</u>	<u>10</u>	<u>5</u>	<u>5</u>
<u>26</u>	<u>26</u>	<u>10.4</u>		
<u>27</u>	<u>27</u>	<u>10.8</u>		
<u>28</u>	<u>28</u>	<u>11.2</u>		
<u>29</u>	<u>29</u>	<u>11.6</u>		
<u>30</u>	<u>30</u>	<u>12</u>		
<u>31</u>	<u>31</u>	<u>12.4</u>		
<u>32</u>	<u>32</u>	<u>12.8</u>		
<u>33</u>	<u>33</u>	<u>13.2</u>		
<u>34</u>	<u>34</u>	<u>13.6</u>		
<u>35</u>	<u>35</u>	<u>14</u>		
<u>36</u>	<u>36</u>	<u>14.4</u>		
<u>37</u>	<u>37</u>	<u>14.8</u>		
<u>38</u>	<u>38</u>	<u>15.2</u>		
<u>39</u>	<u>39</u>	<u>15.6</u>		
<u>40</u>	<u>40</u>	<u>16</u>		
<u>41</u>	<u>41</u>	<u>16.4</u>		
<u>42</u>	<u>42</u>	<u>16.8</u>		
<u>43</u>	<u>43</u>	<u>17.2</u>		
<u>44</u>	<u>44</u>	<u>17.6</u>		
<u>45</u>	<u>45</u>	<u>18</u>		
<u>46</u>	<u>46</u>	<u>18.4</u>		
<u>47</u>	<u>47</u>	<u>18.8</u>		
<u>48</u>	<u>48</u>	<u>19.2</u>		
<u>49</u>	<u>49</u>	<u>19.6</u>		
<u>50</u>	<u>50</u>	<u>20</u>		

(e) For violation (2), what criteria will be used to determine penalties for certifications submitted late?

Certifications submitted late will be assessed the following penalties:

<u>Days Late</u>	<u>Amount of Penalty</u>
<u>1 – 30</u>	<u>\$1,000</u>
<u>31 – 60</u>	<u>\$5,000</u>
<u>More than 60</u>	<u>Up to \$50,000</u> <u>(Considered nonresponsive)</u>

(f) Are there mitigating factors that the Administrative Law Judge or Board may consider in reducing the penalty amount for any violation?

Yes. The Administrative Law Judge or the Board may consider, but is not limited to considering, evidence of the following, as provided by the product manufacturer:

1. Impact on diversion and sustainable markets.
2. Size of company.
3. Degree of cooperation or noncooperation, including documented efforts to obtain container manufacturer's documentation.
4. Technological feasibility of compliance.
5. History of previous compliance.

**Note: Authority cited:**

*Sections 40502 and 42325 of the Public Resources Code.*

**Reference:**

*Sections 42310, 42321 and 42322 of the Public Resources Code*